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JAN 24 2005

OFFICE OF PETITIONS

In re Application of :
Logan, Burd, Durgin, Read, Doe, :
Colella, Hale, Mansfield, Palone, : DECISION REFUSING STATUS
Boone, and Santos : UNDER 37 CFR 1.47(a)
Application No. 10/769,383 :
Filed: 31 January, 2004 :
Attorney Docket No. E-05 :

This is in response to the petition filed under 37 CFR 1.47(a) on 15 December, 2004.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor.

FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.

Extensions of time may be obtained in accordance with 37 CFR 1.136(a).

The above-identified application was filed on 31 January, 2004, without an executed oath or declaration. Accordingly, on 15 June, 2004, Initial Patent Examination Division mailed a Notice to File Missing Parts of Nonprovisional Application, requiring, *inter alia*, an executed oath or declaration and a surcharge for its late filing.

In response, on 15 December, 2004, petitioners filed a four (4) month extension of time accompanied by a declaration naming James D. Logan, Dana Burd, Scott A. Durgin, Gregory J. Read, Brian D. Doe, Vincent E. Colella, MacFarland Hale, Paul M. Mansfield,

Michael G. Palone, Stephen Boone, and Jeffrey M. Santos as joint inventors, signed by all joint inventors except Doe on behalf of themselves and joint inventor Doe.

Petitioners state that Doe has refused to sign the declaration.

A grantable petition under 37 CFR 1.47(a) requires:

(1) proof that the non-signing inventor cannot be reached or located, notwithstanding diligent effort, or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);

(2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;

(3) the petition fee;

(4) a surcharge of \$130 or \$65 (small entity) if the petition and/or declaration is not filed at the time of filing the application, and

(5) a statement of the last known address of the non-signing inventor.

The petition lacks items (1) and (2).

With regard to item (1), the petition is dismissed because the showing of record is unclear as to whether the declaration accompanying the application papers sent to the non-signing inventor with the transmittal letter dated 18 October, 2004, recited the proper inventive entity. A review of the papers received on 15 December, 2004, reveals that the declaration signed by joint inventor Boone does not list Jeffrey M. Santos as a joint inventor. Additionally, it is noted that the two (2) pages of declaration listing Durgin, Read, and Doe, and Palone, Boone, and Santos, respectively, are both titled as "Page 1 of 3". As it is unclear whether Doe was presented with a declaration listing Santos as a joint inventor, it cannot be ruled out that Doe refused to sign the declaration due to inventorship *per se*.

Petitioners must therefore show that an application properly naming the inventive entity (specification, including claims, drawings if any, and a declaration correctly stating the inventorship) was sent to inventor Doe along with a request that he sign and return the declaration.

With regard to item (2), the declaration is defective in that joint inventor Boone signed a declaration that did not name the proper inventive entity. Additionally, as noted above, the page numbering is inconsistent on two pages of the declaration.

Petitioners must provide an oath or declaration in compliance with 37 CFR 1.63 and 1.67, naming the proper inventive entity, signed by all of the signing inventors on behalf of themselves and the non-signing inventor.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (703) 872-9306
 Attn: Office of Petitions

By hand: U.S. Patent and Trademark Office
 Customer Service Window, Mail Stop Petition
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

Telephone inquiries related to this decision should be directed to the undersigned at 571-272-3231.



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